

107TH CONGRESS
2D SESSION

H. R. 5118

IN THE SENATE OF THE UNITED STATES

JULY 17, 2002

Received

JULY 19, 2002

Read twice and referred to the Committee on the Judiciary

AN ACT

To provide for enhanced penalties for accounting and auditing improprieties at publicly traded companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Corporate Fraud Ac-
3 countability Act of 2002”.

**4 SEC. 2. HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE
5 FRAUD.**

6 (a) MAIL FRAUD.—Section 1341 of title 18, United
7 States Code, is amended by striking “five” and inserting
8 “20”.

9 (b) WIRE FRAUD.—Section 1343 of title 18, United
10 States Code, is amended by striking “five” and inserting
11 “20”.

12 (c) SECURITIES FRAUD.—Chapter 63 of title 18,
13 United States Code, is amended by adding at the end the
14 following:

15 “§ 1348. Securities fraud

16 “Whoever knowingly executes a scheme or artifice—
17 “(1) to defraud any person in connection with
18 any security registered under section 12 or 15(d) of
19 the Securities Exchange Act of 1934 (15 U.S.C. 78l,
20 78o(d)) or section 6 of the Securities Act of 1933
21 (15 U.S.C. 77f); or

22 “(2) to obtain, by means of false or fraudulent
23 pretenses, representations, or promises, any money
24 or property in connection with the purchase or sale
25 of any security registered under section 12 or 15(d)
26 of the Securities Exchange Act of 1934 (15 U.S.C.

1 78l, 78o(d)) or section 6 of the Securities Act of
2 1933 (15 U.S.C. 77f),
3 shall be fined under this title, or imprisoned not more than
4 25 years, or both.”.

5 (d) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 63 of title 18, United States
7 Code, is amended by adding at the end the following:
“1348. Securities fraud.”.

8 SEC. 3. TAMPERING WITH A RECORD OR OTHERWISE IM-
9 PEDING AN OFFICIAL PROCEEDING.

10 Section 1512 of title 18, United States Code, is
11 amended—

12 (1) by redesignating subsections (c) through (i)
13 as subsections (d) through (j), respectively; and

14 (2) by inserting after subsection (b) the fol-
15 lowing new subsection:

16 “(c) Whoever corruptly—

17 “(1) alters, destroys, mutilates, or conceals a
18 record, document, or other object, or attempts to do
19 so, with the intent to impair the object’s integrity or
20 availability for use in an official proceeding; or

21 “(2) otherwise obstructs, influences, or impedes
22 any official proceeding, or attempts to do so,

23 shall be fined under this title or imprisoned not more than
24 20 years, or both.”.

1 SEC. 4. AMENDMENT TO THE FEDERAL SENTENCING
2 GUIDELINES.

3 (a) REQUEST FOR IMMEDIATE CONSIDERATION BY
4 THE UNITED STATES SENTENCING COMMISSION.—Pur-
5 suant to its authority under section 994(p) of title 28,
6 United States Code, and in accordance with this section,
7 the United States Sentencing Commission is requested
8 to—

9 (1) promptly review the sentencing guidelines
10 applicable to securities and accounting fraud and re-
11 lated offenses;

12 (2) expeditiously consider the promulgation of
13 new sentencing guidelines or amendments to existing
14 sentencing guidelines to provide an enhancement for
15 officers or directors of publicly traded corporations
16 who commit fraud and related offenses; and

17 (3) submit to Congress an explanation of ac-
18 tions taken by the Sentencing Commission pursuant
19 to paragraph (2) and any additional policy rec-
20 commendations the Sentencing Commission may have
21 for combating offenses described in paragraph (1).

22 (b) CONSIDERATIONS IN REVIEW.—In carrying out
23 this section, the Sentencing Commission is requested to—

24 (1) ensure that the sentencing guidelines and
25 policy statements reflect the serious nature of securi-
26 ties, pension, and accounting fraud and the need for

1 aggressive and appropriate law enforcement action
2 to prevent such offenses;

3 (2) assure reasonable consistency with other
4 relevant directives and with other guidelines;

5 (3) account for any aggravating or mitigating
6 circumstances that might justify exceptions, includ-
7 ing circumstances for which the sentencing guide-
8 lines currently provide sentencing enhancements;

9 (4) ensure that guideline offense levels and en-
10 hancements for an obstruction of justice offense are
11 adequate in cases where documents or other physical
12 evidence are actually destroyed or fabricated;

13 (5) ensure that the guideline offense levels and
14 enhancements under United States Sentencing
15 Guideline 2B1.1 (as in effect on the date of enact-
16 ment of this Act) are sufficient for a fraud offense
17 when the number of victims adversely involved is sig-
18 nificantly greater than 50;

19 (6) make any necessary conforming changes to
20 the sentencing guidelines; and

21 (7) assure that the guidelines adequately meet
22 the purposes of sentencing as set forth in section
23 3553 (a)(2) of title 18, United States Code.

24 (c) EMERGENCY AUTHORITY AND DEADLINE FOR
25 COMMISSION ACTION.—The United States Sentencing

1 Commission is requested to promulgate the guidelines or
2 amendments provided for under this sections as soon as
3 practicable, and in any event not later than the 120 days
4 after the date of enactment of this Act, in accordance with
5 the procedures sent forth in section 21(a) of the Sen-
6 tencing Reform Act of 1987, as though the authority
7 under that Act had not expired.

8 **SEC. 5. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-
9 LATION OF SECURITIES FRAUD LAWS.**

10 Section 523(a) of title 11, United States Code, is
11 amended—

12 (1) in paragraph (17), by striking “or” after
13 the semicolon;

14 (2) in paragraph (18), by striking the period at
15 the end and inserting “; or”; and

16 (3) by adding at the end, the following:
17 “(19) that—

18 “(A) is a claim for—

19 “(i) the violation of any of the Fed-
20 eral securities laws (as that term is defined
21 in section 3(a)(47) of the Securities Ex-
22 change Act of 1934), any of the State se-
23 curities laws, or any regulation or order
24 issued under such Federal or State securi-
25 ties laws; or

1 “(ii) common law fraud, deceit, or
2 manipulation in connection with the pur-
3 chase or sale of any security; and
4 “(B) results, in relation to any claim de-
5 scribed in subparagraph (A), from—
6 “(i) any judgment, order, consent
7 order, or decree entered in any Federal or
8 State judicial or administrative proceeding;
9 “(ii) any settlement agreement en-
10 tered into by the debtor; or
11 “(iii) any court or administrative
12 order for any damages, fine, penalty, cita-
13 tion, restitutionary payment, disgorgement
14 payment, attorney fee, cost, or other pay-
15 ment owed by the debtor.”.

16 **SEC. 6. CORPORATE RESPONSIBILITY FOR FINANCIAL RE-
17 PORTS.**

18 (a) IN GENERAL.—Chapter 63 of title 18, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“§ 1349. Failure of corporate officers to certify finan-
22 cial reports**

23 “(a) CERTIFICATION OF PERIODIC FINANCIAL RE-
24 PORTS.—Each periodic report containing financial state-
25 ments filed by an issuer with the Securities Exchange

1 Commission pursuant to section 13(a) or 15(d) of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78m(a) or
3 78o(d)) shall be accompanied by a written statement by
4 the chairman of the board, chief executive officer, and
5 chief financial officer (or equivalent thereof) of the issuer.

6 “(b) CONTENT.—The statement required under sub-
7 section (a) shall certify that those financial statements
8 fairly and accurately represent, in all material respects,
9 the operations and financial condition of the issuer.

10 “(c) CRIMINAL PENALTIES.—Whoever—

11 “(1) knowingly violates this section shall be
12 fined not more than \$1,000,000, or imprisoned not
13 more than 10 years, or both; or

14 “(2) willfully violates this section shall be fined
15 not more than \$5,000,000, or imprisoned not more
16 than 20 years, or both.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of chapter 63 of title 18, United States
19 Code, is amended by adding at the end the following:

“1349. Failure of corporate officers to certify financial reports.”.

20 **SEC. 7. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMI-
21 NAL OFFENSES.**

22 (a) IN GENERAL.—Chapter 1 of title 18, United
23 States Code, is amended by inserting before section 2 the
24 following:

1 **“§ 1. Attempt and conspiracy”**

2 “Any person who attempts or conspires to commit
3 any offense against the United States shall be subject to
4 the same penalties as those prescribed for the offense, the
5 commission of which was the object of the attempt or con-
6 spiracy.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of title 18, United States Code, is amend-
9 ed so that the item relating to section 1 reads as follows:
“1. Attempt and conspiracy.”.

10 **SEC. 8. INCREASED CRIMINAL PENALTIES UNDER SECURI-**

11 **TIES EXCHANGE ACT OF 1934.**

12 Section 32(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78ff(a)) is amended—

14 (1) by striking “\$1,000,000, or imprisoned not
15 more than 10 years” and inserting “\$5,000,000, or
16 imprisoned not more than 20 years”; and

17 (2) by striking “\$2,500,000” and inserting
18 “\$25,000,000”.

19 **SEC. 9. TEMPORARY FREEZE AUTHORITY FOR THE SECURI-**

20 **TIES AND EXCHANGE COMMISSION.**

21 (a) IN GENERAL.—Section 21C(c) of the Securities
22 Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended
23 by adding at the end the following:

24 “(3) TEMPORARY FREEZE.—

25 “(A) IN GENERAL.—

1 “(i) ISSUANCE OF TEMPORARY
2 ORDER.—Whenever, during the course of a
3 lawful investigation involving possible vio-
4 lations of the Federal securities laws by an
5 issuer of publicly traded securities or any
6 of its directors, officers, partners,
7 controling persons, agents, or employees, it
8 shall appear to the Commission that it is
9 likely that the issuer will make extraor-
10 dinary payments (whether compensation of
11 otherwise) to any of the foregoing persons,
12 the Commission may petition a Federal
13 district court for a temporary order requir-
14 ing the issuer to escrow, subject to court
15 supervision, those payments in an interest-
16 bearing account for 45 days.

17 “(ii) STANDARD.—A temporary order
18 shall be entered under clause (i), only after
19 notice and opportunity for a hearing, un-
20 less the court determines that notice and
21 hearing prior to entry of the order would
22 be impracticable or contrary to the public
23 interest.

1 “(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i)
2 shall—

3 “(I) become effective immediately;

4 “(II) be served upon the parties
5 subject to it; and

6 “(III) unless set aside, limited or
7 suspended by a court of competent jurisdiction,
8 shall remain effective and
9 enforceable for 45 days.

10 “(iv) EXTENSIONS AUTHORIZED.—
11 The effective period of an order under this
12 subparagraph may be extended by the
13 court upon good cause shown for not
14 longer than 45 additional days, provided
15 that the combined period of the order shall
16 not exceed 90 days.

17 “(B) PROCESS ON DETERMINATION OF
18 VIOLATIONS.—

19 “(i) VIOLATIONS CHARGED.—If the
20 issuer or other person described in subparagraph (A) is charged with any violation
21 of the Federal securities laws before
22 the expiration of the effective period of a

1 temporary order under subparagraph (A)
2 (including any applicable extension period),
3 the order shall remain in effect, subject to
4 court approval, until the conclusion of any
5 legal proceedings related thereto, and the
6 affected issuer or other person, shall have
7 the right to petition the court for review of
8 the order.

9 “(ii) VIOLATIONS NOT CHARGED.—If
10 the issuer or other person described in sub-
11 paragraph (A) is not charged with any vi-
12 olation of the Federal securities laws before
13 the expiration of the effective period of a
14 temporary order under subparagraph (A)
15 (including any applicable extension period),
16 the escrow shall terminate at the expira-
17 tion of the 45-day effective period (or the
18 expiration of any extension period, as ap-
19 plicable), and the disputed payments (with
20 accrued interest) shall be returned to the
21 issuer or other affected person.”.

22 (b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of
23 the Securities Exchange Act of 1934 (15 U.S.C. 78u-
24 3(c)(2)) is amended by striking “This” and inserting
25 “paragraph (1)”.

1 **SEC. 10. AUTHORITY OF THE COMMISSION TO PROHIBIT**
2 **PERSONS FROM SERVING AS OFFICERS OR**
3 **DIRECTORS.**

4 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
5 21C of the Securities Exchange Act of 1934 (15 U.S.C.
6 78u-3) is amended by adding at the end the following:

7 “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT
8 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—
9 In any cease-and-desist proceeding under subsection (a),
10 the Commission may issue an order to prohibit, condi-
11 tionally or unconditionally, and permanently or for such
12 period of time as it shall determine, any person who has
13 violated section 10(b) or the rules or regulations there-
14 under, from acting as an officer or director of any issuer
15 that has a class of securities registered pursuant to sec-
16 tion, or that is required to file reports pursuant to section
17 (d), if the conduct of that person demonstrates unfitness
18 to serve as an officer or director of any such issuer.”.

19 (b) SECURITIES ACT OF 1933.—Section 8A of the
20 Securities Act of 1933 (15 U.S.C. 77h-1) is amended by
21 adding at the end of the following:

22 “(f) AUTHORITY OF THE COMMISSION TO PROHIBIT
23 PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—
24 In any cease-and-desist proceeding under subsection (a),
25 the Commission may issue an order to prohibit, condi-
26 tionally or unconditionally, and permanently or for such

1 period of time as it shall determine, any person who has
2 violated section 17(a)(1) or the rules or regulations there-
3 under, from acting as an officer or director of any issuer
4 that has a class of securities registered pursuant to section
5 of the Securities Exchange Act of 1934, or that is required
6 to file reports pursuant to section 15(d) of that Act, if
7 the conduct of that person demonstrates unfitness to serve
8 as an officer or director of any such issuer.”.

9 **SEC. 11. RETALIATION AGAINST INFORMANT.**

10 (a) IN GENERAL.—Section 1513 of title 18, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 “(e) Whoever knowingly, with the intent to retaliate,
14 takes any action harmful to any person, including inter-
15 ference with the lawful employment or livelihood of any
16 person, for providing to a law enforcement officer any
17 truthful information relating to the commission or possible
18 commission of any Federal offense, shall be fined under
19 this title or imprisoned not more than 10 years, or both.”.

Passed the House of Representatives July 16, 2002.

Attest: JEFF TRANDAHL,
Clerk.